

# TENTATIVE DRAFT

*NOTE: It is requested that suggested corrections be sent to the Office of the Secretary, San Francisco, as soon as possible.*

## MINUTES

### BOARD OF GOVERNORS MEETING

#### LOS ANGELES

#### FEBRUARY 5, 2000

The Board of Governors of the State Bar of California convened in the Board Room, 1149 South Hill Street, Los Angeles, California at 9:04 a.m., on Saturday, February 5, 2000, Andrew J. Guilford presiding.

The following members of the Board of Governors were present: Ronald A. Albers, Patrick R. Dixon, James E. Herman, Paul S. Hokokian, Palmer Brown Madden, Scott H. McNutt, Karen S. Nobumoto, James D. Otto, David L. Roth, Clara L. Slifkin, Paul W. Smigliani, Maria D. Villa, Thomas J. Warwick, Jr. and Scott Wylie.

The following members of staff also were present: Jerome Braun, Larry Doyle, Scott Drexel, Jeffrey T. Gersick, Bob Hawley, David Long, Judy Johnson, T. William Melis and Marie M. Moffat.

10 Upon motion made, seconded and unanimously adopted, it was

RESOLVED that the general minutes of the meeting of the Board of Governors held on December 4, 1999, in Los Angeles, hereby are approved as written.

All members present voted yes on the above matter: Ronald A. Albers, Patrick R. Dixon, James E. Herman, Paul S. Hokokian, Palmer Brown Madden, James D. Otto, David L. Roth, Clara L. Slifkin, Paul W. Smigliani, Maria D. Villa, Thomas J. Warwick, Jr. and Scott Wylie.

10 Upon motion made, seconded and unanimously adopted, it was

RESOLVED that the general minutes of the fax poll meeting of the Board of Governors held between December 17 and 29, 1999, in San Francisco, hereby are approved as written.

All members present voted yes on the above matter: Ronald A. Albers, Patrick R. Dixon, James E. Herman, Paul S. Hokokian, Palmer Brown Madden, James D. Otto, David L. Roth, Clara L. Slifkin, Paul W. Smigliani, Maria D. Villa, Thomas J. Warwick, Jr. and Scott Wylie.

30

The President made the following announcements:

1. The President announced his intention to pursue many of the principles in *Boards that Make a Difference* by John Carver.
2. He reminded board members of the procedural change that was made at the December 4, 1999 meeting, in recording the Board vote, using the Legislature's roll-call vote process.
3. He summarized his outreach efforts since the last Board meeting.
4. He reminded the Board that the election of the President of the State Bar has been set for the Board meeting on June 10, 2000. Board members who wish to announce their candidacy should do so at the March meeting.
5. The President on behalf of the Board of Governors expressed his appreciation to Jeffrey T. Gersick, Acting Executive Director for the past year, and presented him with a resolution of appreciation for his extraordinary dedication and commitment to the State Bar during a very difficult time for the Bar.

42

Jeffery T. Gersick, Acting Executive Director/Secretary called the Board's attention to the schedule for the 2000 Board of Governors election.

He announced that Marie M. Moffat had been made General Counsel and that Robert A. Hawley had been made Acting Senior Executive, Human Resources, effective immediately.

51

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Administration and Finance, that the Board hereby receives the financial statement for the month of November 1999, as certified by the Director of the Office of Finance and on file in the San Francisco office of the State Bar.

All members present and recorded on the roll-call slip voted yes on the above matter.

52

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Administration and Finance, that the Board hereby receives the investment report for the month of November 1999, as certified by the Director of the Office of Finance and on file in the San Francisco office of the State Bar.

All members present and recorded on the roll-call slip voted yes on the above matter.

53

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Administration and Finance, that the Board hereby receives the Client Security Fund Report for the

month of November 1999, as certified by the Director of the Office of Finance and on file in the San Francisco office of the State Bar.

All members present and recorded on the roll-call slip voted yes on the above matter.

54 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Administration and Finance, that the Board hereby amends the State Bar Travel Expense Policy, effective January 1, 2000, concerning authorized reimbursement of lodging expenses as follows:

In San Francisco, actual expense for lodging (single occupancy, plus tax) is not to exceed \$170.00 per day for 2000.

All members present and recorded on the roll-call slip voted yes on the above matter.

55 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Appointments, that the Board hereby adopts the Board Committee on Appointments Charter, in the form attached to these minutes and made a part hereof.

All members present and recorded on the roll-call slip voted yes on the above matter.

56 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Administration and Finance, that the Board hereby waives the accrued fees and penalties of Kent Froehlich in the amount of \$3,914; and it is

FURTHER RESOLVED that the Board hereby directs that Don Kohan be retroactively enrolled as an inactive member as of January 1, 1998, and that fees and penalties at the inactive rate are due; and it is

FURTHER RESOLVED that the Board hereby waives the difference between Mr. Kohan's active and inactive fees and penalties in the amount of \$340.50.

All members present and recorded on the roll-call slip voted yes on the above matter.

57 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Legal Committee, that the Board hereby adopts the Charge of the Board Legal Committee, in the form attached to these minutes and made a part hereof.

All members present and recorded on the roll-call slip voted yes on the above matter.

58 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Administration and Finance, and the State Bar's Standing Committee on Group Insurance Programs, that the Board hereby delegates to the Committee on Group Insurance Programs the authority to grant or deny to Milliman and Robertson the consent it requests to undertake dual representation of the State Bar of California and Standard Insurance Company pertaining to the State Bar's Group Disability Insurance Program; and it is

FURTHER RESOLVED that the Group Insurance Committee's action carrying out this delegation be in accordance with industry standards and in the best interest of the group insurance program and the State Bar; and it is

FURTHER RESOLVED that this delegation pertains to this sole issue and extends no further.

All members present and recorded on the roll-call slip voted yes on the above matter.

111 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Administration and Finance and the State Bar's Committee on Group Insurance Programs, that the Board hereby authorizes the State Bar approved member insurance programs to hot-link to the first page of the State Bar's internet Home Page, and that such links will be provided on a cost neutral basis to the State Bar; and it is

FURTHER RESOLVED that the final form of any website to be linked to the State Bar's Home Page shall be subject to the approval of the Chair of the Committee on Group Insurance Programs, or said chair's designee, and the State Bar's Office of General Counsel.

All members present and recorded on the roll-call slip voted yes on the above matter.

112 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Administration and Finance, that the Board hereby approves a reduction of \$94,095 in the interfund charge assessed to the Sections Fund for 1999.

All members present and recorded on the roll-call slip voted yes on the above matter.

113 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Administration and Finance, that the Board hereby amends the Rules and Regulations of the State Bar, article I, section 7.1, to include the following subsection:

H. Any member applying to scale annual membership fees under this

section whose application has been denied in whole or in part, shall have the right to request review of such denial by the Board Committee on Administration and Finance or its designee

and it is

FURTHER RESOLVED that the amendment of article I, section 7.1 to include a subsection H is adopted as an interim measure, pursuant to the provisions of section 13 of the *Procedures for Adoption, Amendment or Repeal of State Bar Regulations* (Public Comment Rules), and that the proposed amendment of article I, section 7.1, be put out for public comment for a period of ninety days; and it is

FURTHER RESOLVED that the date on which penalties shall attach to delinquent membership fees be extended from March 15, 2000, to April 15, 2000, or if necessary, to a later date upon the approval of the Board Committee on Administration and Finance or its designee.

All members present and recorded on the roll-call slip voted yes on the above matter.

The President summarized the status of the fee payments and revenue stream.

120 Palmer Brown Madden, Chair of the Board Committee on Regulation and Discipline, gave a status report on the regeneration of the discipline system.

121 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Regulation and Discipline, that the Board hereby directs that public information regarding the final imposition of discipline upon members of the State Bar (including the type or degree of discipline imposed, the year in which the discipline was imposed and the case number relating to that discipline) be reflected on the State Bar's website, except that information regarding the imposition of a private reproof following the issuance of a notice of disciplinary charges is filed shall not be reflected on the State Bar's website unless an amendment to the Rules of Procedure of the State Bar of California authorizing such disclosure is hereafter adopted; and it is

FURTHER RESOLVED that the Board hereby directs that public information regarding changes in membership status of a State Bar member (including the type of suspension or inactive enrollment, the year in which the suspension or inactive enrollment was imposed and the case number, if any, relating to that suspension or inactive enrollment) be reflected on the State Bar's website.

All members present and recorded on the roll-call slip voted yes on the above matter.

130 James D. Otto, Co-Chair, Board Committee on Communications and Member Relations, reported that *California Bar Journal* will publish quarterly special editions aimed at new admittees. He also reported on the status of Minimum Continuing Legal Education, including the progress of the commission appointed to examine the MCLE program.

Karen Nobumoto summarized the Mid-Year Meeting Program and described the effort to minimize conflicts between Board activities and Mid-Year Meeting activities.

140 Karen Nobumoto, Chair, Board Committee on Appointments, reported on procedures to be used as the committee makes its decisions and appointment recommendations to the Board.

150 David L. Roth, Chair, Board Committee on Legal Services and Client Relations, reported on various projects being pursued by the committee, such as the State Bar pamphlets program.

161 Larry Doyle, Chief Legislative Counsel, reported on pending legislation.

162A Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Legislative and Court Relations, that the Board hereby supports the Judicial Council's proposal to modify the court's reference authority under Code of Civil Procedure section 638 et seq. to, among other things, clarify that discovery references should be made only when exceptional circumstances of the case require, require that a court make a specific finding about the parties' ability to pay the referee's fees, clarify that counsel's ability to pay the referee's fees may not be considered when determining whether the parties are able to pay these fees, and require that the court's reference order include the maximum hourly rate the referee may charge and if required by a party, the estimated maximum number of hours for which the referee may charge.

All members present and recorded on the roll-call slip voted yes on the above matter.

162B Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Legislative and Court Relations, that the Board hereby supports A.B. 592 (Migden), which would increase juror fees and create a pilot project to reimburse jurors for child or dependent care expenses.

All members present and recorded on the roll-call slip voted yes on the above matter.

162C Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Legislative and Court Relations, that the Board hereby supports S.B. 1184 (Murray), which would increase the number of judgeships in the California trial and appellate courts.

All members present and recorded on the roll-call slip voted yes on the above matter.

163 Upon motion made, seconded and adopted, it was

RESOLVED, upon recommendation of the Board Committee on Legislative and Court Relations, that the Board hereby amends the State Bar's Legislative Policies and Procedures to require that legislative positions taken by the sections, committees and

the Conference of Delegates include the following disclaimers, in boldface type:

For Sections:

**This position is only that of the \_\_\_\_\_ SECTION of the State Bar of California. This position has not been adopted by either the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California.**

**Membership in \_\_\_\_\_ Section is voluntary and funding for the section activities, including all legislative activities, is obtained entirely from voluntary sources.**

For Committees:

**This position is only that of the State Bar of California's STANDING COMMITTEE ON \_\_\_\_\_. This position has not been adopted by the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California.**

For the Conference of Delegates:

**This position is only that of the CONFERENCE OF DELEGATES of the State Bar of California. This position has not been adopted by the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California.**

**Funding for the legislative program of the Conference of Delegates is obtained entirely from voluntary sources.**

and it is

FURTHER RESOLVED that the Board hereby amends the State Bar's Legislative Policies and Procedures to require that legislative positions taken onto the Board of Governor's legislative program are funded solely from State Bar funds; and it is

FURTHER RESOLVED that this particular policy and procedure cannot be amended or repealed without notice to the Executive Committee of the Conference of Delegates.

All members present and recorded on the roll-call slip voted yes on the above matter.

170

Marie M. Moffat, General Counsel, presented issues on behalf of Valerie Miller, Chair, Board Legal Committee.

171 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, pursuant to section 13 of the Procedures for Adoption, Amendment or Repeal of State Bar Regulations, following publication for comment and consideration of comments received and upon recommendation of the Board Legal Committee, that the Board hereby amends the Rules and Procedures of the Commission on Judicial Nominees Evaluation in the form attached to these minutes and made a part hereof.

All members present and recorded on the roll-call slip voted yes on the above matter.

172 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Legal Committee, that the Board hereby amends the Rules and Regulations of the State Bar of California, article VI, section 3A(3)(a), to read as follows:

\* \* \*

(3) The Executive Committee of the Conference shall have the following duties:

(a) To plan, chair and regulate all meetings of the Conference and ~~the Annual Conference of Bar Presidents.~~

All members present and recorded on the roll-call slip voted yes on the above matter.

173 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Legal Committee, that the Board hereby amends the Conflict of Interest Code for Designated Employees of the State Bar of California, in the form attached to these minutes and made a part hereof.

All members present and recorded on the roll-call slip voted yes on the above matter.

180 Clara L. Slifkin, Chair, Board Committee on Future Planning, gave a status report on the progress of the committee, including details of both short-term and long-term subcommittees.

301 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Task Force on Volunteer Groups, that the Board hereby dissolves the Standing Committee on Minimum Continuing Legal Education and the members and officers of the committee be notified that their terms end immediately; and it is

FURTHER RESOLVED that the members and officers of the Standing Committee on Minimum Continuing Legal Education be thanked for their service to the State Bar; and it is

FURTHER RESOLVED that any remaining duties and/or responsibilities of the



Standing Committee shall henceforth be within the charge of the Board Committee on Communications and Member Relations.

All members present and recorded on the roll-call slip voted yes on the above matter.

601 Upon motion made, seconded and unanimously adopted, it was

RESOLVED that the Board hereby adopts the action plan recommended by the Board Executive Director Search Committee.

All members present and recorded on the roll-call slip voted yes on the above matter.

Maria D. Villa recognized Nancy J. Hoffmeier Zamora, President, California Women Lawyers Association, and thanked her for attending the meeting.

The Board went into closed session at 11:25 a.m., and those other persons present in the meeting except the Acting Executive Director/ Secretary, General Counsel and members of the Senior Executive Staff left the meeting.

The Board went into executive session at 11:52 a.m., and all other persons present except the Acting Executive Director left the meeting.

The Board resumed open session at 12:00 noon, and members of the staff and others re-entered the meeting.

141 The appointments were considered in confidential session and the action of the Board is reported below.

Upon motion made, seconded and unanimously adopted, it was

RESOLVED that the Board hereby ratifies all appointments to various committees contained in February agenda items 6011 and 6020.

All members present and recorded on the roll-call slip voted yes on the above matter.

6011 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Legal Services and Client Relations, that the Board hereby reappoints Ruthe C. Ashley, John A. Cape, David Howard and Steven Gevercer to the Legal Services of Northern California's Board of Directors, each to serve for a three-year term commencing April 20, 2000, and expiring the third Thursday in April 2003.

All members present and recorded on the roll-call slip voted yes on the above matter.

6020 Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Committee on Administration and

Finance, that the Board hereby directs the Board Committee on Appointments to assist in outreach efforts for Committee Group Insurance Programs, with the goal of achieving a pool of candidates with greater diversity, and to bring back to the Board a recommendation for appointment of members to the Committee on Group Insurance Programs, prior to the next regularly scheduled Board meeting on April 1, 2000.

All members present and recorded on the roll-call slip voted yes on the above matter.

4010

Upon motion made, seconded and unanimously adopted, it was

RESOLVED, upon recommendation of the Board Legal Committee, that the Board hereby authorizes distribution of the *Brosterhous v. State Bar* informational document, Test for Chargeability, in the form attached to these minutes and made a part hereof; and it is

FURTHER RESOLVED pending clarification of the *Brosterhous v. State Bar* decision, and appellate review, no matters falling outside the parameters of the *Brosterhous* decision shall be placed on the agenda of any State Bar committee or commission unless the matter or its consideration involves no expenditure of mandatory bar dues.

All members present and recorded on the roll-call slip voted yes on the above matter.

XTRA Upon motion made, seconded and unanimously adopted, it was

RESOLVED that the name Jeffrey T. Gersick, Acting Executive Director, hereby is deleted, effective March 3, 2000, from the resolution appearing in the permanent book of the general minutes of the meetings of the Board of Governors regarding persons authorized to sign withdrawal orders, transfer orders and checks and to have access to safe deposit box, and his authority hereunder hereby is revoked; and it is

FURTHER RESOLVED that the permanent book of the general minutes of the meetings of the Board of Governors regarding persons authorized to sign withdrawal orders, transfer orders and checks and to have access to the safe deposit box hereby is amended, effective March 3, 2000, by adding thereto as a person so authorized the name of Marie M. Moffat, Acting Executive Director; and it is

FURTHER RESOLVED that the Board hereby authorizes, effective March 3, 2000, that a signature plate engraved with the name of Marie M. Moffat, Acting Executive Director, is to be used with a check signing machine on accounts payable checks less than \$2,500.00, and on all payroll checks processed by the State Bar payroll service bureau, and to revoke authority for use of a signature plate engraved with the name of the Acting Executive Director, Jeffrey T. Gersick.

All members present and recorded on the roll-call slip voted yes on the above matter.

The Board adjourned at 12:01 p.m., Saturday, February 5, 2000, in honor of Jeffery T. Gersick, Acting Executive Director, who has been appointed by Governor Grey Davis to an overseas position. The Board to meet again at the call of the President at any time prior to

the next regularly scheduled meeting of the Board, or if no such meeting be called, in the Pearl Room, Holiday Inn Hotel, 750 Kearny Street, San Francisco, on Saturday, April 1, 2000.

February 5, 2000  
Attachment to the Minutes

February 171  
    Judicial Nominees Evaluation, rules & procedures ..... -10-

February 55  
    Board Committee on Appointments Charter ..... -4-

February 57  
    Charge of the Board Legal Committee ..... -4-

February 173  
    Conflict of Interest Code for Designated Employees of the State ..... -10-